

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
7:11-CR-92-D

UNITED STATES OF AMERICA	)	
	)	
v.	)	<b>ORDER</b>
	)	
TED LYNN LOCKLEAR,	)	
	)	
Defendant.	)	

On September 3, 2013, Ted Lynn Locklear filed a pro se motion for a reduction of his sentence under 18 U.S.C. § 3582(c) and Amendments 750 and 759 of the Guidelines [D.E. 55]. He also seeks relief under Alleyne v. United States, 133 S. Ct. 2151 (2013), and contends that it applies retroactively. See. [D.E. 55] 4.

On May 1, 2012, this court sentenced Locklear to 156 months' imprisonment for conspiracy to distribute and to possess with intent to distribute 280 grams or more of cocaine base (crack) and 5 kilograms or more of cocaine. See [D.E. 49, 50, 56]. Locklear did not file a notice of appeal, and his conviction became final on May 15, 2012. See Fed. R. App. P. 4(b)(1); Clay v. United States, 537 U.S. 522, 527–28, 532 (2003).

At Locklear's sentencing hearing, the court used the guidelines referenced in Amendments 750 and 759. See PSR ¶ 50; [D.E. 56] 12, 24–30. Thus, Locklear's motion for relief under section 3582(c) and Amendments 750 and 759 lacks merit and is denied.

As for Locklear's request for relief under Alleyne, section 3582(c) is not the appropriate mechanism to assert Alleyne's retroactive application. See United States v. Outlaw, No. 13-6999, 2013 WL 5433519, at \*1 n.\* (4th Cir. Sept. 30, 2013) (per curiam) (unpublished). In any event,

Alleyne is not retroactively applicable to Locklear's conviction. See, e.g., In re Payne, No. 13-5103, 2013 WL 5200425, at \*1-2 (10th Cir. Sept. 17, 2013); Simpson v. United States, 721 F.3d 875, 876 (7th Cir. 2013); Willoughby v. United States, Nos. 3:13-cv-493-FDW, 3:99-cr-24-FDW-6, 2013 WL 5220774, at \*2 (W.D.N.C. Sept. 17, 2013) (unpublished). Accordingly, the court denies Locklear's request for relief under Alleyne.

In sum, Locklear's motion for relief under 18 U.S.C. § 3582(c) [D.E. 55] is DENIED.

SO ORDERED. This 18 day of October 2013.

  
JAMES C. DEVER III  
Chief United States District Judge